

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 26, 2025

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
STATE OF WASHINGTON, *ex rel.*, DR.
DEANETTE L. PALMER, PhD, and
RICHARD PALMER, husband and wife,
Plaintiffs,

v.

MULTICARE HEALTH SYSTEM d/b/a
MUTLICARE DEACONESS HOSPITAL
and MULTICARE ROCKWOOD CLINIC
NEUROSURGERY AND SPINE
CENTER,
Defendants.

No. 2:22-CV-00068-SAB

**ORDER DENYING MOTION TO
DISMISS, IN PART; DENYING
MOTION TO STRIKE**

Before the Court are Defendant's Motion to Dismiss Pursuant to FRCP 12(b)(6), or Alternatively, For Summary Judgment Pursuant to FRCP 56, ECF No. 63, and Motion to Strike Plaintiffs' Statement of Disputed and Additional Facts and to Deem Defendant's Facts Undisputed, ECF No. 86. The motions were heard without oral argument. Plaintiff United States is represented by Daniel Fruchter, Jacob Brooks, Tyler Tornabene and Derek Taylor. The State of Washington is represented by Rachel Sterett. The relators are represented by Beth Bollinger and

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1 William Gilbert. Defendant MultiCare Health System and Multicare Rockwood
2 Clinic Neurosurgery and Spine Center (“MultiCare”) is represented by Anne
3 Dorshimer, John Chenery, Matthew Curley, Scott Gallisdorfer, Thomas Barnard,
4 and Wendy Olson.

5 In January 2024, the United States and State of Washington filed a
6 Complaint in Intervention, ECF No. 26. Defendant asks the Court to dismiss the
7 Complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6) and for failing
8 to meet Fed. R. Civ. P. 9 requirements. In the alternative, Defendant moves for
9 summary judgment on all claims.

10 Motion Standard

11 A. Fed. R. Civ. P. 12(b)(6)

12 To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege
13 “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp.*
14 *v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face when “the
15 plaintiff pleads factual content that allows the court to draw the reasonable
16 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,
17 556 U.S. 662, 678 (2009). As the Ninth Circuit explained:

18 To be entitled to the presumption of truth, allegations in a complaint or
19 counterclaim may not simply recite the elements of a cause of action but
20 must contain sufficient allegations of underlying facts to give fair notice and
21 to enable the opposing party to defend itself effectively. The factual
22 allegations that are taken as true must plausibly suggest an entitlement to
relief, such that it is not unfair to require the opposing party to be subjected
to the expense of discovery and continued litigation.

23 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

24 Dismissal under Rule 12(b)(6) may be based on either the lack of a
25 cognizable legal theory or the absence of sufficient facts alleged under a
26 cognizable legal theory. *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d
27 1035, 1041 (9th Cir. 2010).

28 When evaluating a Rule 12(b)(6) motion, the court must draw all reasonable

1 inferences in favor of the non-moving party. *Usher v. City of Los Angeles*, 828
2 F.2d 556, 561 (9th Cir. 1987). However, the court is not required to accept
3 conclusory allegations as true or to accept any unreasonable inferences in a
4 complaint. *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1054 (9th Cir. 2008).

5 **B. Fed. R. Civ. P. 9**

6 The pleading standard is more demanding when a party alleges fraud or
7 mistake. In that case, the party must “state with particularity the circumstances
8 constituting fraud or mistake,” although “[m]alice, intent, knowledge, and other
9 conditions of a person’s mind may be alleged generally.” Fed. R. Civ. P. 9(b);
10 *United States v. Corinthian Colleges*, 655 F.3d 984, 996 (9th Cir. 2011).
11 Conclusory allegations of fraud and broad allegations that include no particularized
12 supporting detail are insufficient. *Id.*

13 Rule 9(b) imposes a heightened requirement so that the fraud defendant can
14 prepare an adequate answer to the allegations. *In re Gilead Sci. Sec. Lit.*, 536 F.3d
15 at 1056. To satisfy Rule 9(b), a relator-plaintiff must “identify the who, what,
16 when, where, and how of the misconduct charged, as well as what is false or
17 misleading about the purportedly fraudulent statement, and why it is false.” *United*
18 *States ex rel. Anita Silingo v. WellPoint, Inc.*, 904 F.3d 667, 677 (9th Cir. 2018)
19 (quotations omitted).

20 As explained by the Ninth Circuit, this requires the Complaint to provide
21 sufficient details to give Defendant sufficient notice of Plaintiff’s theory and to
22 give the Court some assurance that the theory has a basis in fact. *Id.* Additionally,
23 Rule 9 serves “to deter the filing of complaints as a pretext for the discovery of
24 unknown wrongs, shield defendants from the harm that comes from being the
25 subject of fraud charges and prohibit plaintiffs from unilaterally imposing upon the
26 court, the parties and society enormous social and economic costs absent some
27 factual basis.” *Bly-Magee v. Calif.*, 236 F.3d 1014, 1019 (9th Cir. 2001). “Notably,
28 Rule 9(b) requires only that the *circumstances of fraud* be stated with particularity;

1 other facts may be plead generally, or in accordance with Rule 8.” *Corinthian*
2 *Colleges*, 655 F.3d at 992 (emphasis in original).

3 **Plaintiffs’ Complaint**

4 The Complaint alleges Defendant MultiCare Health System and Multicare
5 Rockwood Clinic Neurosurgery and Spine Center (“MultiCare”) knowingly
6 submitted materially false claims to federal health care programs by billing for the
7 costs of surgical procedures performed by Dr. Jason A. Dreyer, D.O. (“Dr.
8 Dreyer”), a neurosurgeon who, as MultiCare knew, falsified diagnoses, performed
9 medically unnecessary procedures and over-operations, billed for services that
10 were not medically indicated and that he did not actually perform, and performed
11 surgical procedures below the applicable standard of care.

12 The Complaint asserts that MultiCare hired, credentialed, employed, and
13 supervised Dr. Dreyer while ignoring and failing to take appropriate action on
14 numerous red flags, warnings, and specific evidence of Dr. Dreyer’s fraud and
15 endangerment of the public in order to generate revenue for itself and for its
16 officers and executives, by allowing and incentivizing Dr. Dreyer to perform a
17 high volume of complex spinal surgeries operating on hundreds of unsuspecting
18 patients and putting financial considerations in front of the safety and health of
19 those patients in the Eastern District of Washington and elsewhere.

20 The Complaint alleges that MultiCare knowingly incentivized Dr. Dreyer,
21 through its system of un-capped wRVUs,¹ to conduct a high volume of complex
22 _____

23 ¹wRVUs, or Work Relative Value Units are a standard unit of measurement used to
24 establish value for health care procedures. wRVUs for particular services and
25 procedures were calculated based on a value assigned under the Medicare
26 Physician Fee Schedule. The more complex a procedure, and the more revenue it
27 generated for MultiCare, the greater the number of wRVUs received by the
28 neurosurgeon. Under MultiCare’s production model, neurosurgeons were paid a set

1 spinal surgeries, paying Dr. Dreyer millions in order to allow MultiCare to bill for
2 millions more, including from federal health care programs.

3 The Complaint maintains that MultiCare's knowing conduct resulted in the
4 submittal of dozens, if not hundreds, of materially false and fraudulent claims for
5 the professional services of Dr. Dreyer and related health care costs to Medicare
6 and other federal health care programs, and the use of accompanying false records
7 and statements that MultiCare knowingly made and used, material to those false
8 and fraudulent claims. Through these false and fraudulent claims, MultiCare
9 received millions of dollars in revenue, while unknowing patients were endangered
10 and harmed.

11 The Complaint provides four patient examples of MultiCare's materially
12 false and fraudulent claims to federal healthcare programs for Dr. Dreyer's
13 professional services and related medical costs.

14 The Complaint presents claims under the federal False Claim Act, 31 U.S.C.
15 § 3729(a)(1)(A) & (B); the Washington False Claim Act, Wash. Rev. Code §
16 74.66.020(1)(a)-(b); as well as claims for Payment by Mistake, Unjust Enrichment,
17 Conversion, and Negligence.

18 Defendant's Arguments

19 Defendant asserts the Complaint fails to plead the False Claim Act claims
20 with the particularity required by Rule 9(b) because it fails to plead the details of
21

22 amount for each wRVU generated for a procedure or service they personally
23 performed. Under MultiCare's production model, neurosurgeons, were paid
24 compensation for each wRVU that they generated, with no cap on the wRVU-
25 based compensation that could be earned. In this manner, the greater the number
26 procedures of higher complexity that the neurosurgeon performed, the greater the
27 compensation the neurosurgeon received, and the neurosurgeon would always have
28 a financial incentive for performing additional surgeries of higher complexity.

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1 the alleged fraud scheme with sufficient detail, fails to plead representative
2 samples of alleged false claims with sufficient detail, and fails to plead facts
3 sufficient to meet the False Claim Act's rigorous scienter standard. Defendant also
4 argues the state law claims should be dismissed because the allegations lack
5 plausibility and fail to plead the claims for payment by mistake and conversion
6 with sufficient particularity required by Rule 9(b).

7 Analysis

8 Here, the Court finds the Complaint plausibly states the False Claim Act
9 claims and the common law claims based in fraud with the necessary particularity.
10 The Complaint pleads the underlying fraudulent scheme with particularity and
11 sufficient details to satisfy Rule 9(b)'s heightened pleading standard. On the other
12 hand, the Complaint fails to plead a sufficient legal basis to establish the existence
13 of an independent legal duty to submit accurate claims under the federal Medicare
14 Program and Washington State Medicaid program.

15 A. False Claim Acts

16 The False Claims Act is not "an all-purpose antifraud statute, or a vehicle for
17 punishing garden-variety breaches of contract or regulatory violations." *Universal*
18 *Health Servs. v. United States*, 579 U.S. 176, 192-92 (2016) (quotation omitted).
19 The essential elements of False Claim Act liability are: (1) a false statement or
20 fraudulent course of conduct, (2) made with scienter, (3) that was material, (4)
21 causing the government to pay out money or forfeit moneys due. *United States ex*
22 *rel. Hendow v. Univ. of Phoenix*, 461 F.3d 1166, 1170 (9th Cir. 2006).

23 Because medical necessity is a condition of payment, every Medicare claim
24 includes an express or implied certification that treatment was medically necessary.
25 *Winter ex rel. United States v. Garden Reg. Hosp and Med. Center, Inc.*, 953 F.3d
26 1108, 1114 (9th Cir. 2020). Claims for unnecessary treatment are false claims. *Id.*
27 Defendants act with the required scienter if they know the treatment was not
28 medically necessary, or act in deliberate ignorance or reckless disregard of whether

1 the treatment was medically necessary. *Id.*

2 Courts are to interpret the FCA broadly, to keep with Congress's intention
3 "to reach all types of fraud, without qualification, that might result in financial loss
4 to the Government." *United States v. Neifert-White Co.*, 390 U.S. 228, 232 (1968).
5 That said, courts must strictly enforce the Act's materiality and scienter
6 requirements. *Universal Health Services, Inc.*, 579 U.S. at 192.

7 Here, the Complaint alleges with sufficiency the materiality and scienter
8 requirements. Plaintiffs allege that at the minimum Defendants acted with reckless
9 disregard for the truth or falsity of the claims submitted for payment to federal
10 health care programs and Medicaid. It also asserts that payments would not have
11 been paid to Defendants had it been known they were false or fraudulent.

12 **B. Representative Samples**

13 The Complaint alleges the particular details of a scheme to submit false
14 claims with sufficient details to give Defendants notice of the particular
15 misconduct that is alleged to constitute the fraud charge. It also includes four
16 representative examples. The four example patients are presented to describe a
17 fraudulent scheme, and each include the specifics about each procedure, why it
18 was unnecessary, when the procedure occurred, the dollar amount of services
19 billed for and paid, and the fact payment was for unnecessary medical treatment.

20 While the four example patients are not necessary to satisfy Rule 9(b), these
21 examples, along with the other allegations, make clear the Complaint satisfies the
22 9(b) requirements of the who, what, when, where, and how of the alleged
23 fraudulent scheme. The Court notes that at this stage of the proceeding, Plaintiffs
24 do not have to prove anything. Instead, the question is whether the Complaint
25 adequately alleges the elements of a False Claim Act claim. Here, the Complaint
26 contains sufficient facts to raise a reasonable expectation that discovery will reveal
27 evidence of the alleged fraudulent scheme. *See Cafasso, U.S. ex Rel. v. General*
28 *Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011).

C. State Law Claims

The Complaint plausibly alleges with the required particularity that Defendant engaged in a fraudulent scheme to support claims for payment by mistake, conversion, and unjust enrichment.

1. Payment by Mistake

Payment by mistake is an alternative theory of recovery. The common law remedy of payment by mistake is available to the United States independent of its statutory remedies. *United States v. Systron-Donner Corp.*, 486 F.2d 249, 251 (9th Cir. 1973). “The Government by appropriate action can recover funds which its agents have wrongfully, erroneously, or illegally paid.” *United States v. Wurts*, 303 U.S. 414, 415 (1938). “If the government made these payments under an erroneous belief which was material to the decision to pay, it is entitled to recover the payments.” *United States v. Mead*, 426 F.2d 118, 124 (9th Cir. 1970).

Knowledge of the falsity is not a requisite for recover under the mistake doctrine. *Id.* at 125 n.6. Thus, even when the United States cannot establish that a defendant acted knowingly for purposes of the False Claim Act, it may be entitled to recovery under the alternative theory of payment by mistake of fact. *Id.*

The Complaint contains sufficient allegations to plausibly allege a claim for payment by mistake with particularity. The allegations are pled with sufficient particularity to place Defendant on notice that Plaintiffs are alleging that payments were made by them to Defendant under the belief that the payments were properly owned, but the belief was erroneously formed, and the mistaken belief was material to the decision to pay.

2. Conversion

Under Washington law, conversion is “the unjustified, willful interference with a chattel that deprives a person entitled to the property of possession.” *Potter v. Wash. St. Patrol*, 165 Wash.2d 67, 78 (2008). Conversion is a tort. *Washington State Bank v. Medalia Healthcare LLC*, 96 Wash.App. 547, 554 (1999). In the

1 ordinary sense, conversion means to take and keep another's property. *Repin v.*
2 *State*, 198 Wash.App. 243, 270 (2017).

3 The Complaint alleges with particularity and plausibility that Defendant
4 willfully converted federal and state funds by submitting fraudulent and false
5 claims to the certain federal health care programs and Medicaid.

6 **3. Unjust Enrichment**

7 Unjust enrichment allows "recovery for the value of the benefit retained
8 absent any contractual relationship because notions of fairness and justice require
9 it." *Young v. Young*, 164 Wash.2d 477, 484 (2008). To state a claim for unjust
10 enrichment Plaintiffs must allege: (1) a benefit conferred upon the defendant by the
11 plaintiff; (2) knowledge by the defendant of the benefit; and (3) the defendant
12 retains the benefit under circumstances that make it inequitable for the defendant to
13 retain the benefit without paying for it. *Id.*

14 The Complaint alleges with particularity and plausibility the elements of a
15 claim for unjust enrichment. Specifically, the Complaint alleges that Defendant
16 was unjustly enriched when it received payments for materially false and
17 fraudulent claims for compensation for services by Dr. Dreyer.

18 **4. Negligence**

19 The Complaint asserts that Defendant's fraudulent and false billing practices
20 were negligent. To state a claim for negligence, Plaintiffs must plead (1) the
21 existence of a duty; (2) breach of that duty; (3) resulting injury; and (4) proximate
22 cause. *Brugh v. Fun-Tastic Rides Co.*, 8 Wash. App.2d 176, 180 (2019).

23 A duty of care is "an obligation, to which the law will give recognition and
24 effect, to conform to a particular standard of conduct toward another." *Nunley v.*
25 *Chelan-Douglas Health Dist.*, 32 Wash.App.2d 700, 709 (2024). The
26 determination of whether a duty exists is a question of law. *Id.* In determining
27 whether a duty exists, courts consider principles reflected in existing law as well as
28 logic, common sense, justice, policy, and precedent. *Id.* (quotation omitted).

1 The Complaint alleges that pursuant to agreement and statute, Defendant
2 owed a duty of care to Plaintiffs as a licensed provider under the Medicare
3 Program and Washington State Medicaid program, in that Defendant promised to
4 submit accurate, complete and truthful claims in submitting claims for payment, as
5 well as agreeing that all claims would be reasonable and medically necessary for
6 its patients. It appears that Plaintiffs believe ¶¶ 29-48 in the Complaint set forth
7 Defendant's duty of care. The Court does not believe these paragraphs provide a
8 sufficient legal basis for finding that Defendant had an independent duty to submit
9 accurate claims to under the federal Medicare Program and Washington State
10 Medicaid program. As such, the Court dismisses this claim without prejudice, but
11 grants Plaintiffs leave to amend their Complaint.

12 **D. Motion for Summary Judgment**

13 The Court declines to rule on Defendant's Motion for Summary Judgment at
14 this stage of the proceedings and before discovery has been completed. *See*
15 *Burlington N. Santa Fe R. Co. v. Assiniboine & Sioux Tribes of Fort Peck Rsrv.*,
16 323 F.3d 767, 773–74 (9th Cir. 2003) (“Where ... a summary judgment motion is
17 filed so early in the litigation, before a party has had any realistic opportunity to
18 pursue discovery relating to its theory of the case, district courts should” allow
19 discovery to proceed.).

20 **E. Defendant's Motion to Strike**

21 Defendant asks the Court to strike portions of Plaintiffs' Statement of
22 Disputed and Additional Facts and deem its facts undisputed for purpose of
23 summary judgment. Defendant objects to Plaintiffs providing context when
24 agreeing with or disputing its Statement of Facts. The Court declines to do so.
25 Defendant is asking for an extreme sanction that is not warranted in this case. In
26 any event, because the Court declines to rule on its Motion for Summary Judgment
27 Defendant's Motion to Strike is moot.

28 //

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Accordingly, **IT IS HEREBY ORDERED:**

1. Defendant's Motion to Dismiss Pursuant to FRCP 12(b)(6), or
Alternatively, For Summary Judgment Pursuant to FRCP 56, ECF No. 63, is
DENIED, in part.

2. Plaintiffs' negligence claim is **DISMISSED, without prejudice.**
Plaintiffs are granted leave to amend their Complaint. Any Amended Complaint
shall be filed within thirty (30) days from the date of this Order.

3. Defendant's Motion to Strike Plaintiffs' Statement of Disputed and
Additional Facts and to Deem Defendant's Facts Undisputed, ECF No. 86, is
DENIED, as moot.

IT IS SO ORDERED. The District Court Executive is hereby directed to
file this Order and provide copies to counsel.

DATED this 26th day of March 2025.



Stanley A. Bastian

Stanley A. Bastian
Chief United States District Judge